

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SPINE SPECIALISTS OF MICHIGAN, P.C.,
(Stella Najor and Aracelis Najjar)

Plaintiff,

Civil Case No. 15-14102
Honorable Linda V. Parker

v.

ALLSTATE PROPERTY & CASUALTY
INSURANCE COMPANY, a foreign
corporation, and CITIZENS INSURANCE
COMPANY OF AMERICA,

Defendants.

**OPINION AND ORDER DENYING DEFENDANT ALLSTATE
PROPERTY & CASUALTY INSURANCE COMPANY'S MOTION TO
DISMISS [ECF NO. 53] & MOTION TO STRIKE PLAINTIFF'S
AMENDED COMPLAINT (ECF NO. 55)**

On July 14, 2015, Plaintiff Spine Specialists of Michigan, P.C. (“Spine Specialists”) filed this lawsuit in a Michigan state court against Defendant Allstate Property & Casualty Insurance Company (“Allstate”) for the reimbursement of PIP benefits. (ECF No. 1-1 at Pg ID 17.) Plaintiff filed an amended complaint on August 31, 2015, naming Citizens Insurance Company of America (“Citizens”) as a Defendant. (*Id.* at Pg ID 22.) Citizens removed Plaintiff’s Amended Complaint to federal court based on diversity jurisdiction on November 23, 2015. (ECF No. 1

at Pg ID 3.) On August 16, 2017, this Court granted Defendant Citizens' motion for summary judgment. (ECF No. 40.)

On March 12, 2018, this Court granted, in part, and denied, in part, Defendant Allstate's motion for summary judgment. (ECF No. 52.) In that Order, this Court ordered Plaintiff to file a Second Amended Complaint within thirty days, which was due on April 11, 2018. (ECF No. 52 at Pg ID 1040.) Presently before the Court is Allstate's motion to dismiss for failure to comply with the Court's order, filed April 16, 2018, and Defendant Allstate's motion to strike, filed April 19, 2018. (ECF Nos. 53 & 55.)

Defendant Allstate argues that the Court should dismiss Plaintiff's complaint for failure to prosecute because Plaintiff failed to file the Second Amended Complaint by April 11, 2018 as ordered by the Court. (ECF No. 53 at Pg ID 1047.) Although Plaintiff filed its Second Amended Complaint on April 16, 2018, it was untimely and filed without leave of Court. Further, Plaintiff failed to provide the Court with any explanation as to why it failed to comply with the Court's order. However, the Court does not find that Plaintiff's conduct is grounds for dismissal. Particularly, there is no record of Plaintiff habitually missing court deadlines or delaying this litigation. Additionally, Defendant is not prejudiced by Plaintiff's five-day delay. Therefore, the Court will permit the case to go forward.

However, the parties are reminded to comply with all Court orders and seek leave when appropriate to do so.

Accordingly,

IT IS ORDERED that Defendant Allstate's motion to dismiss (ECF No. 53) is **DENIED**; and

IT IS FURTHER ORDERED that Defendant Allstate's motion to strike (ECF No. 55) is **DENIED**.

IT IS SO ORDERED.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: May 7, 2018

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, May 7, 2018, by electronic and/or U.S. First Class mail.

s/ R. Loury
Case Manager